

PT 05-32

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**VICTORY HEALTH SERVICES,**

**Applicant**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**Docket No: 04-PT-0011**

**Real Estate Exemption  
For 2003 Tax Year**

**P.I.N. 06-03-100-017**

**Lake County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Jack E. Boehm and Mr. William J. Seitz, Fisk, Kart, Katz and Regan, Ltd., on behalf of Victory Health Services; Ms. Sara E. Groom and Ms. Vanessa V. Clohessy, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, on behalf of Intervenor, Antioch Community High School District No. 117; Mr. George Foster, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** At issue in this proceeding is whether a sheltered care facility located on real estate identified by Lake County Parcel Index Number 06-03-100-017 (hereinafter the “subject property”) should be exempt from 2003 real estate taxes under section 15-65 of the Property Tax Code. 35 ILCS 200/15-65. This controversy arose as follows: Victory Health Services (hereinafter “Victory”) filed a Property Tax Exemption Complaint with the Lake County Board of Review seeking exemption from 2003 real estate taxes for the sheltered care facility, *inter alia*, located on the subject property. The

Board reviewed Victory's Complaint and recommended that the sheltered care facility be non-exempt and taxable. The Illinois Department of Revenue (hereinafter the "Department") rejected the Board's recommendation in a determination dated December 3, 2003, finding the sheltered care facility exempt. On February 17, 2004, Intervenor, Antioch Community High School District No. 117, filed an appeal of the exemption for the sheltered care facility. On April 11, 2005, a formal administrative hearing was held with Mary Riggs, Vice-President of Long-Term Care, and Ken Weiber, Director of Finance, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department's determination be reversed and the sheltered care facility not be exempt from 2003 property taxes.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was in exempt ownership and use in tax year 2003. Tr. pp. 29-30; Dept. Ex. No. 1.
2. Victory Health Services, incorporated under the Not For Profit Corporation Act of Illinois on October 6, 1982, is the parent corporation of the Village of Victory Lakes (the "Village"). The Village is a campus in Lindenhurst, Illinois comprised of a continuing care facility, including a skilled nursing facility, a sheltered care facility which is at issue in this proceeding, and an independent living facility. Tr. pp. 31-32, 71-72; Intervenor's Ex. No. 10.
3. The sheltered care facility, a two story building on 4.23 acres, provides assistance with daily living, meal preparation, bathing, toileting, medication reminders, anything that helps people live safely when they are no longer able to live

safely at their primary homes. Other services such as medications, physician visits, beauty/barber shop services and transportation are available for an additional fee. Tr. pp. 34, 51-52, 110-111; Applicant's Ex. No. 2.

4. Residents in the sheltered care facility provide their own furniture and have private suites surrounded by a courtyard. Residents are provided three meals/day and are assisted by nursing assistants. Activities are provided. A care plan is developed and residents are assisted with whatever is available in the confines of the sheltered care license. Tr. pp. 35-36.

5. Full capacity for the sheltered care facility is 84 residents; 24 of the units are larger and could accommodate a couple. In 2003, the facility averaged 51 or 52 residents. Tr. pp. 35-36, 114-115.

6. Victory's Bylaws state that it is organized and operated as a not-for-profit corporation "for charitable, benevolent, scientific and educational purposes and will provide those services regardless of age, race, religious belief, color, creed, sex, physical or mental handicap, national origin and ability to pay consistent with the financial resources, needs and priorities of the Corporation." The Bylaws state that Victory will not engage in the practice of medicine. Tr. pp. 34, 36, 117-119; Intervenor's Ex. No. 1.

7. Victory's Bylaws and Articles of Incorporation do not contain a provision for the waiver or reduction of fees at the sheltered care facility. The sheltered care facility is not qualified, built or financed under Section 202 of the National Housing Act. Tr. pp. 37-38.

8. Victory's "Administrative Admissions Policy" states that "[R]esidents will be accepted based on their need for services, without discrimination on the basis of race, color, national origin, or handicap." Tr. pp. 48-49; Intervenor's Ex. No. 3.
9. The application process for admission to the sheltered care facility includes a functional assessment showing that the applicant is able to live independently, a mental examination and a financial screening. The financial screening requires a listing of the applicant's income, assets, debts, health insurance, and whether they receive Medicare or Medicaid. If the screening indicates that the applicant does not have the resources necessary for the sheltered care facility, the applicant is encouraged to seek public assistance. Victory does not accept applications from or serve persons who qualify for public assistance or public aid under the state and federal Medicaid Programs. Tr. pp. 38-42, 44; Intervenor's Ex. No. 2.
10. The "Confidential Financial Information" form completed by applicants for financial screening does not mention a financial assistance program. Tr. pp. 50-51; Intervenor's Ex. No. 5.
11. Victory's "Application/Admissions Process" which describes the procedure to be followed for an inquiry by an interested party or family member does not mention a financial assistance program. Tr. pp. 49-50; Intervenor's Ex. No. 4.
12. Residents must sign a contract with Victory upon admission to the sheltered care facility. Section 3(C) of the Contract states that it is the residents' and residents' family members obligation to obtain financial assistance if resident has insufficient funds or income to meet his obligations "or be subject to the terms of

Victory Assisted Living's involuntary discharge policy." Section 43 of the Contract states that the resident acknowledges that he had received a "[W]ritten copy of Victory Assisted Living's policy regarding discharge of a resident whose private funds for payment of care are exhausted." Tr. pp. 44-45, 47-48; Intervenor's Ex. No. 2.

13. Section 7 of the Contract requires a resident to pay prior to or upon admission, one month's advance payment of fees to be held as security for payment of fees and charges incurred. This deposit earns interest and shall be refunded 45 days after termination of the contract and after settlement of outstanding amounts. "In addition to the one month's security deposit, the first month's fees must be paid upon admission." The deposit and first month's fees are between \$7,000 and \$8,000. There is no sliding scale for the security deposit and rent. Tr. pp. 45-46, 70, 78; Intervenor's Ex. No. 2.

14. Section 8 of the Contract states that Victory may charge a fee of 9% per annum, or higher if allowed by law, "of all fees and charges, including interest, outstanding as of the 16<sup>th</sup> day of the month." Section 22 of the Contract states that if a resident fails to pay all fees and charges when due, "then Victory is entitled to all costs of collection, including court costs and reasonable attorneys' fees." Tr. pp. 46-47, 96-97; Intervenor's Ex. No. 2.

15. Section 28 of the Contract states that in the event real estate taxes are charged to Victory, "resident shall be liable for all real estate taxes assessed or attributed to his/her suite." Tr. p. 47; Intervenor's Ex. No. 2.

16. Victory's "Financial Assistance Program" policy for the sheltered care facility, effective in 2003, states that Victory provides a limited number of beds for residents who require financial assistance. "Financial assistance ('The Program') is provided based on the individual's need, corporate financial resources and the availability of a unit." "Acceptance into The Program is dependent not only on financial need, but on the level of charitable funds available through Victory Health Services." Application to The Program should be made 9 months prior to exhaustion of funds. Residents will be considered based on their date of original admission, date of application for need, the availability of financial assistance (or unit), and the resident's and family's ability to pay. If there are no financial assistance beds available at the time of a request for financial assistance, the facility would work with a family to transfer the resident to a facility that accepts Medicaid. There are no guarantees that a resident will be accepted into The Program if the facility is unable to maintain the current levels of charitable care. Tr. pp. 57-60, 63-64, 119; Intervenor's Ex. No. 7.
17. Residents who are accepted into the "Financial Assistance Program" must execute a "Financial Assistance Program Addendum Modifying the Contract Between Residents and Victory Lakes Assisted Living." The Addendum, effective in 2003, provides that the resident's family assures that the resident has not spent down his or her funds in contemplation of receiving financial assistance. The Addendum requires residents to sign over their rights to any life insurance policy in an amount equal to the amount received for financial assistance. Premiums to continue insurance coverage are the responsibility of the family or responsible party. Residents receiving

financial assistance must agree to relinquish subsequent gifts received in an amount equal to the assistance received, must surrender the security deposit paid to enter the sheltered care facility and be evaluated annually in order to continue to receive financial aid. Tr. pp. 60-62; Intervenor's Ex. No. 8.

18. Victory's corporate policy on "Charity Care" states that Victory "will not deny necessary medical services to anyone solely due to their inability to pay for those services." This policy is not provided to residents at the time they sign the Contract. Tr. pp. 54-55; Intervenor's Ex. No. 6.

19. In 2003, 100% of the revenue received by the sheltered care facility was generated from patient billings and ancillary charges. The facility did not receive any payments from third-party payers, such as insurance companies. Tr. pp. 52-53, 56, 93, 95.

20. In 2003, Victory's revenue from patient billings was \$1,828,310 and revenue from ancillary charges was \$33,295. Rent for a suite in the sheltered care facility is approximately \$40,000 to \$54,000 per year depending on the type of room. Tr. pp. 95-96; Intervenor's Ex. No. 12.

21. In 2003, 3 residents at the sheltered care facility received partial financial assistance totaling \$41,541. Resident "V.C." received assistance from January through July, 2003, totaling \$14,790. Resident "B.O." received assistance from January through September, 2003, totaling \$19,132. Resident "R.D." received assistance from July through December, 2003 totaling \$7,529. Tr. pp. 84-89; Intervenor's Ex. No. 11.

## **CONCLUSIONS OF LAW:**

An examination of the record establishes that Intervenor has demonstrated, by the presentation of testimony and through exhibits and argument, sufficient evidence to warrant the denial of an exemption from 2003 real estate taxes to the sheltered care facility. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code which states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit:



- (a) Institutions of public charity.
  - (b) \*\*\*
  - (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative evidence that the home or facility is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.<sup>1</sup>
- 35 ILCS 200/15-65

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). At the evidentiary hearing and in Applicant's Reply Brief, Victory took the position that the applicable statutory subsection was 735 ILCS 200/15-65(a), "institution of public charity," and proceeded to apply the guidelines articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). In Korzen, the court set forth guidelines for determining whether an organization qualifies as an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the

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<sup>1</sup> Victory is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. Intervenor's Ex. No. 3. Ms. Riggs testified at the evidentiary hearing that, to her knowledge, there was no provision in Victory's Bylaws for waiver or reduction of fees for the sheltered care facility and there was no provision for waiver or reduction of fees in Victory's Articles of Incorporation. Tr. p. 37. She also testified that the sheltered care facility was not "qualified, built or financed under Section 202 of the National Housing Act." Tr. p. 38. It is noted that "Applicant's Reply Brief" does not contain any arguments supporting exemption under 735 ILCS 200/15-65(c). I conclude that the sheltered care facility does not satisfy the statutory requirements of (c)(i) or (c)(ii) in 735 ILCS 200/15-65(c).

burdens on government]; (2) the organization has no capital, capital stock or shareholders, earns no profits or dividends; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 156.

The above factors are guidelines for assessing whether property is exempt from taxation but are not definitive requirements. DuPage County Board of Review v. Joint Comm's on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

**Guideline 1: The benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens of government].**

The benefits derived from the sheltered care facility are not for an indefinite number of persons and the facility does not reduce the burdens of government. According to testimony at the evidentiary hearing, the application process for admission into the facility includes a functional assessment showing that the applicant is able to live independently, a mental examination and a financial screening. The financial screening includes a listing of the applicant’s income, assets, debts, health insurance, and whether

they receive Medicare or Medicaid. The purpose of the financial screening is to determine whether applicants have sufficient funds to reside in the facility. If the screening indicates that the applicant does not have the financial resources to afford the sheltered care facility, the applicant would be encouraged to seek public assistance. Ms. Riggs testified that seeking public assistance disqualifies applicants from admittance to the sheltered care facility. Victory does not accept applications from or serve persons who qualify for public aid under the state and federal Medicaid Programs. Tr. pp 38-42, 44; Intervenor's Ex. No. 2.

Admission to the sheltered care facility is not available to applicants who are determined through financial screening to be unable to pay. Admission to the facility is also not available to applicants who are encouraged by Victory to seek public assistance. Seeking public assistance disqualifies applicants from admittance to the facility. Admission to the facility is also not available to applicants who qualify for public aid under the state and federal Medicaid programs. Tr. p. 41. Victory's financial screening is designed to admit only applicants who will not need financial assistance of any kind while residing in the sheltered care facility. It would be unreasonable to conclude that Victory benefits an indefinite number of persons when admission to the sheltered care facility is only available to the very limited number of applicants who demonstrate through financial screening that they are able to pay for its services.

Victory's "Financial Assistance Program" policy, effective in 2003, is further evidence that the sheltered care facility does not benefit an indefinite number of persons. The policy states that Victory provides a limited number of beds for residents who require financial assistance. Financial assistance is provided based on the individual's

need, corporate financial resources and the availability of a unit. Acceptance for financial assistance is dependent not only on financial need, but on the level of charitable funds available through Victory Health Services. If there are no financial assistance beds available at the time of a request for financial assistance, the facility would work with a family to transfer the resident to a facility that accepts Medicaid. There are no guarantees that a resident will be accepted into the financial assistance program if the facility is unable to maintain the current levels of charitable care. Tr. pp. 57-60, 63-64, 119; Intervenor's Ex. No. 7.

Ms. Riggs testified that she understood the financial assistance policy to mean that "within a responsible business where there is no margin there can be no mission." Tr. pp. 36, 119. As the Financial Assistance Program policy and the testimony clearly indicates, if any charitable benefits are provided, they are limited by Victory's "margin," the financial needs of the applicant, the number of beds available, corporate financial resources, charitable funds available through Victory and the availability of a unit. Even considering all the above factors, there are "no guarantees" that a resident would be accepted into the financial assistance program. These provisions, which clearly limit the number of people who may receive financial assistance, simply do not support a conclusion that Victory's charitable benefits are for an indefinite number of persons.

Residents who are accepted into the "Financial Assistance Program" must execute a "Financial Assistance Program Addendum Modifying the Contract Between Residents and Victory Lakes Assisted Living." The Addendum, effective in 2003, provides that the resident's family assures that the resident has not spent down his or her funds in contemplation of receiving financial assistance. The Addendum requires residents to sign

over their rights to any life insurance policy in an amount equal to the amount received for financial assistance. Premiums to continue insurance coverage are the responsibility of the family or responsible party. Residents receiving financial assistance must agree to relinquish subsequent gifts received in an amount equal to the financial assistance received, must surrender the security deposit paid to enter the sheltered care facility and be evaluated annually in order to continue to receive financial aid. Tr. pp. 60-62; Intervenor's Ex. No. 8. A resident who receives financial assistance is still billed the full amount for the month with Victory providing as "financial assistance" whatever the resident's contribution does not cover. Tr. p. 89. Residents provide what they can and the balance covered by Victory is considered "charity care." Tr. p. 76.

The Addendum makes it likely that Victory will be repaid for any financial assistance provided to a resident by the requirement that the resident sign over his or her life insurance, subsequent gifts, and security deposit. Accordingly, any "benefits" paid by Victory appear to be more in the nature of a loan than charity. The requirement that residents receiving financial assistance sign over their life insurance, subsequent gifts and security deposits to Victory certainly seems to be "lacking in the warmth and spontaneity indicative of charitable impulse." Korzen at 158. Because of the provisions in the Addendum, and the likelihood that Victory will be repaid for any financial assistance provided to residents, I am unable to conclude that Victory meets the Korzen guideline that "benefits" derived are for an indefinite number of persons.

The second part of the guideline requires an analysis of whether Victory's services lessen the burdens of government. "The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the

public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens.” School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). I conclude that Victory’s policies at the sheltered care facility do not reduce the burdens of government. Victory only accepts applicants who are able to pay for its services. Victory does not accept applications from or serve persons who qualify for public assistance or public aid under the state or federal Medicaid programs. Tr. pp. 39-49. In financially screening applicants prior to admission and limiting its residents to those who can afford to pay for private care, Victory forces the State to care for Medicaid patients and those who are receiving public assistance. If an applicant passes financial screening and is admitted to the sheltered care facility, there is “no guarantee” that the resident can continue at Victory if their funds are depleted and they need financial assistance. A resident in this situation has the potential to increase, rather than lessen, the State’s burden. It is not logical to conclude that Victory “confers” a benefit upon the public and lessens the government’s burden by providing services in the sheltered care facility to those residents who Victory has determined can afford to pay for them.

**Guideline 2: The organization has no capital, capital stock or shareholders and earns no profits or dividends.**

Victory’s Articles of Incorporation state that the corporation does not have “the power to issue certificates of stock or declare dividends.” Intervenor’s Ex. No. 10. Mr. Weiber testified that the sheltered care facility operated at a loss in 2003. Tr. pp. 100, 102. Only consolidated financial statements were admitted into evidence. Intervenor’s

Ex. Nos. 12 and 13. Accordingly, I am unable to verify by documentary evidence that the sheltered care facility did not earn a profit in 2003.

**Guideline 3: Funds are derived mainly from public and private charity, and the funds are held in trust for the objects and purposes expressed in the charter.**

Victory clearly does not meet this guideline. Ms. Riggs testified that in 2003, 100% of the revenue received by the sheltered care facility was generated from patient billings. Tr. pp. 52-53. Mr. Weiber also testified that 100% of the revenue received in 2003 was from patient billings and none of the revenue received was from charity. Tr. p. 93. Victory did not receive any payments from third-party payers such as insurance companies in 2003. Tr. p. 96.

In 2003, Victory's revenue from patient billings was \$1,828,310 and revenue from ancillary charges was \$33,295. Rent for a suite in the sheltered care facility is approximately \$40,000 to \$54,000 per year depending on the type of room. Tr. pp. 95-96; Intervenor's Ex. No. 12. Illinois courts have recognized that a charitable organization does not lose its exemption by reason of the fact that those patients received by it who are able to pay are required to do so as long as all the money received by it is devoted to the general purposes of the charity, and no portion of the money received by it is permitted to inure to the benefit of any private individual engaged in managing the charity. Sisters of St. Francis v. Board of Review, 231 Ill. 317 (1907).

I am unable to reach any conclusion as to whether the revenue received by the sheltered care facility inures to the benefit of any private individual engaged in managing it. There was no testimony at the evidentiary hearing as to salaries paid to employees of the sheltered care facility. Ms. Riggs and Mr. Weiber were never asked what their

salaries were. There was no testimony as to the number of employees at the sheltered care facility, their level or grade, or their salary range. There was no documentary evidence presented as to how Victory's salaries compared to similar organizations or whether the executive and professional people employed by Victory are paid salaries comparable to similar positions in the not-for-profit sector.

Consolidated financial statements were offered into evidence for the entire continuing care facility at the Village of Victory Lakes and for Victory Health Services and Affiliates. Intervenor's Ex. Nos. 12 and 13, respectively. There was no breakdown of salaries paid by Victory in connection with the sheltered care facility. "The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable." Yates v. Board of Review, 312 Ill. 367 (1924). "The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise." 86 Ill. Admin. Code §130.2005(h). No evidence was presented at the hearing as to whether Victory's salaries were reasonable. Without an explanation of the salary structure for the sheltered care facility I am unable to conclude that Victory's revenues are devoted to the general purposes of the charity or that the revenue received by it does not inure to the benefit of any private individual engaged in managing the facility.

**Guideline 4: Charity is dispensed to all who need and apply for it.**

Ms. Riggs testified at the evidentiary hearing that three people applied for financial assistance in 2003 and three people were "accommodated" in 2003. Tr. pp. 87-88. The three people accommodated were apparently already residing at the sheltered care facility when they requested financial assistance. Resident "V.C." received



assistance from January through July, 2003, totaling \$14,790. Resident “B.O.” received assistance from January through September, 2003, totaling \$19,132. Resident “R.D.” received assistance from July through December, 2003, totaling \$7,529. Tr. pp. 84-89; Intervenor’s Ex. No. 11.

Victory’s argument as to why it meets the Korzen guideline that charity be dispensed to all who need and apply for it is that three people applied for financial assistance in 2003 and these three people received financial assistance in 2003. The argument fails to recognize that Victory financially screens applicants before they are admitted to the sheltered care facility. This financial screening ensures that only applicants who are able to afford the services of the sheltered care facility on a long-term basis will be admitted, thus diminishing the possibility that anyone admitted to the facility will ever need financial aid.

Section 7 of the Contract signed by residents upon admission to the sheltered care facility requires a resident to pay prior to or upon admission, one month’s advance payment of fees to be held as security for payment of fees and charges incurred. “In addition to the one month’s security deposit, the first month’s fees must be paid upon admission.” The security deposit and first month’s fees may total \$7,000 to \$8,000 and the requirement that payment be made in advance has never been waived. There is no sliding fee scale for the security deposit and rent. Tr. pp. 45-46, 70, 78; Intervenor’s Ex. No. 2. There was no testimony or evidence at the hearing that any financial assistance was provided to applicants who could not afford the security deposit and first month’s rent. As the Illinois Supreme Court noted in Eden Retirement Center v. Department of Revenue, 213 Ill. 2d 273 (2004), where residents were required to pay a \$5,000 security

deposit upon admission, “[M]ost certainly the benefits derived are only for persons who can pay the substantial entrance fees.”

Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits people who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). There was no testimony or evidence at the hearing that financial assistance was provided to any applicant who appeared through financial screening to be unable to afford the sheltered care facility. Furthermore, as discussed previously in this Recommendation, any “charity” provided by Victory is more in the nature of a loan since residents must sign over to Victory their life insurance, subsequent gifts and security deposits which may be used for repayment of the “charity.”

Victory cited and relied on Sisters of Third Order of St. Francis v. Board of Review of Peoria County, 231 Ill. 317 (1907). In Sisters, the Court recognized that a charitable purpose may be recognized, in spite of a great disparity between the number of charity patients and those who pay for care “so long as it does not appear that any obstacle, of any character, was by the corporation placed in the way of those who might need charity of the kind dispensed by this institution, calculated to prevent such person making application to or obtaining admission to the hospital.” *Id.* at 322. Victory’s reliance on Sisters is misplaced. The financial screening required by Victory is “calculated” to limit admission to the sheltered care facility to those who are able to pay for its services on a long-term basis. Victory’s requirement that residents pass financial screening is noticeably different from Sisters, where “all sick or injured persons ... who seek admission at St. Francis Hospital are received, boarded, nursed and cared for, so

long as they need such attention, without reference to their creed, race or *financial condition...*” (emphasis added) *Id.* at 319-320. For Victory, “financial condition” is one of the requirements for admission. Victory may have dispensed “charity” to all people who needed and applied for it in 2003, but this is only because the financial screening required for admission to the sheltered care facility ensures that very few, if any, residents will ever need “charity.” Even if Victory truly dispensed “charity” to all who needed and applied for it, the Addendum to the Contract makes it likely that Victory will be repaid for its “charity” by the requirement that a resident receiving it sign over his or her life insurance, subsequent gifts, and security deposit.

Victory’s corporate policy on “Charity Care” states that Victory “will not deny necessary medical services to anyone solely due to their inability to pay for those services.” Tr. pp. 54-55; Intervenor’s Ex. No. 6. There was no testimony at the hearing as to what constitutes “medical services.” Victory’s corporate policy on “Charity Care” must be read and interpreted together with Victory’s Bylaws which state that “in no instance,” will Victory engage in the practice of medicine. Intervenor’s Ex. No. 1. The corporate policy of not denying necessary medical services to anyone because of their inability to pay for the services becomes meaningless in light of the restriction in the Bylaws against the practice of medicine. It was never explained at the evidentiary hearing how Victory can provide “necessary medical services” to those unable to pay when it does not engage in the practice of medicine. In summary, Victory’s financial screening of applicants, the likelihood that any “charity” provided will be repaid and Victory’s corporate policy on “Charity Care” which is at odds with its Bylaws force me to conclude that Victory does not dispense charity to all who need and apply for it.

**Guideline 5: No obstacles appear to be placed in the way of those who need and would avail themselves of the charitable benefits dispensed.**

Victory places several obstacles in the way of those who seek charitable benefits. As discussed previously, the application process for admission into the sheltered care facility includes financial screening. This screening includes a listing of the applicant's income, assets, debts, health insurance, and whether they receive Medicare or Medicaid. If the screening indicates that the applicant does not have the resources necessary for the sheltered care facility, the applicant is encouraged to seek public assistance. Victory does not accept applications from or serve persons who qualify for public aid under the state and federal Medicaid Programs. Tr. pp. 38-42, 44; Intervenor's Ex. No. 2. Victory's admission procedure and required financial screening is clearly an obstacle in the way of those who may need financial assistance.

If accepted for admission to the sheltered care facility, an applicant will have to pay between \$7,000 and \$8,000 for a security deposit and first month's rent. This initial payment is similar to that in Eden Retirement Home v. Department of Revenue, 213 Ill. 2d 273 (2004), where the lease signed upon admission to the retirement home required a \$5,000 security deposit. The Court in Eden stated: "Clearly, the entrance fee is an obstacle placed in the way of those seeking the benefits of Eden's independent living units." *Id.* at 294.

I am also unable to conclude from the testimony and evidence admitted at the hearing that the general public would be aware that financial assistance is available at the sheltered care facility. Victory's "Administrative Admissions Policy" states that "[R]esidents will be accepted based on their need for services, without discrimination on

the basis of race, color, national origin, or handicap. No distinction in eligibility for, or in the manner of providing, resident services is made on these bases.” Tr. pp. 48-49; Intervenor’s Ex. No. 3. The policy does not state that there is “no distinction in eligibility” for a resident’s inability to pay for services or need for financial assistance. Victory’s “Application/Admissions Process” which describes the procedure to be followed for an inquiry by an interested party, family member or “significant other,” does not mention a financial assistance program or that the financial assistance program should be discussed during the inquiry. Tr. pp. 49-50; Intervenor’s Ex. No. 4. Additionally, the “Confidential Financial Information” form completed by prospective applicants does not mention a financial assistance program. Tr. pp. 50-51; Intervenor’s Ex. No. 5.

Ms. Riggs testified that she was not sure when people call in to the Village whether the person answering the phone informs the potential resident of the financial assistance program. Tr. p. 62. She testified that information about the financial assistance program is “part of the package that’s given to the party.” She then acknowledged that this package is “not one that’s been presented here today.” Tr. p. 76. No document showing that the existence of the financial assistance program was ever revealed to applicants was admitted into evidence. Ms. Riggs also testified that she was never asked by an applicant to waive the required security deposit and first months rent. Tr. p. 78. In this regard, Victory never produced a document showing that an applicant would know that the deposit and first month’s rent were able to be waived, if in fact they are able to be waived. I am unable to conclude from this testimony that no obstacles are placed in the way of those needing charity.

In Highland Park Hospital, the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” *Id.* at 281. Full capacity at Victory’s sheltered care facility is 84 residents and in 2003 the facility averaged 51 or 52 residents. Tr. pp. 35-36, 114-115. The fact that the sheltered care facility had approximately 30 residents less than full capacity in 2003 certainly indicates that the availability of financial assistance is not being advertised to the general public. In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652. No advertisements, brochures or signs showing that it provides charity care were offered into evidence by Victory.

If an applicant passes Victory’s financial screening and is admitted to the sheltered care facility, the resident signs a contract with Victory. Section 3(C) of the Contract states that it is the residents’ and residents’ family members obligation to obtain financial assistance if a resident has insufficient funds or income to meet his obligations “or be subject to the terms of Victory Assisted Living’s involuntary discharge policy.” Section 43 of the Contract states that the resident acknowledges that he had received a “[W]ritten copy of Victory Assisted Living’s policy regarding discharge of a resident whose private funds for payment of care are exhausted.” Tr. pp. 44-45, 47-48; Intervenor’s Ex. No. 2. Section 43 does not contain an acknowledgement that a resident

has received a copy of Victory's "Financial Assistance Program." Tr. pp. 47-48. Section 8 of the Contract states that Victory may charge a fee of 9% per annum, or higher if allowed by law, "of all fees and charges, including interest, outstanding as of the 16<sup>th</sup> day of the month." Section 22 of the Contract states that if a resident fails to pay all fees and charges when due, "then Victory is entitled to all costs of collection, including court costs and reasonable attorneys' fees." Tr. pp. 46-47, 96-97; Intervenor's Ex. No. 2. These provisions in the contract, without any corresponding acknowledgement that financial assistance is available, are definitely an obstacle placed in the way of those needing financial assistance. It remains unclear from the testimony and evidence exactly how or when an applicant or resident would ever know that financial assistance is available.

Even if a resident was aware that financial assistance was available, as discussed previously, there is "no guarantee" that a resident will be accepted into the financial assistance program. Intervenor's Ex. No. 7. Victory's Bylaws state that the corporation is organized and operated as a not-for-profit corporation "for charitable, benevolent, scientific and educational purposes and will provide those services regardless of age, race, religious belief, color, creed, sex, physical or mental handicap, national origin and ability to pay consistent with the financial resources, needs and priorities of the Corporation." Tr. pp. 34, 36, 117-119; Intervenor's Ex. No. 1. Assuming that a resident knew that financial assistance was available and applied for it, the Bylaws make clear that assistance will not be provided unless it is consistent with the needs and "priorities" of the Corporation. The needs and priorities of the Corporation must be considered obstacles in the way of those needing financial assistance.

**Guideline 6: Exclusive (primary) use of the property is for charitable purposes.**

Victory Health Services, incorporated under the Not For Profit Corporation Act of Illinois on October 6, 1982, is the parent corporation of the Village of Victory Lakes (the “Village”). The Village is a campus in Lindenhurst, Illinois comprised of a continuing care facility, including a skilled nursing facility, a sheltered care facility at issue in this proceeding, and an independent living facility. Tr. pp. 31-32, 71-72; Intervenor’s Ex. No. 10. The sheltered care facility, a two story building with a ground area of 4.23 acres, provides assistance with daily living, including bathing, toileting, medication reminders, anything that helps people live safely when they are no longer able to live safely at their primary homes. Meals are included in the monthly service fee. Additional fees are charged for medications, physician visits, beauty/barber shop services and transportation. Tr. pp. 34, 51-52, 110-111; Applicant’s Ex. No. 2. Residents have their own private suites surrounded by a courtyard. Residents provide their own furniture. Residents are assisted by nursing assistants. Activities are provided. A care plan is developed and residents are assisted with whatever is available in the confines of the sheltered care license. Tr. pp. 35-36.

The testimony and evidence admitted at the hearing do not lead to the conclusion that the sheltered care facility on the subject property is used exclusively for charitable purposes. An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be interpreted to mean the primary purpose, but not a merely incidental purpose or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Incidental acts of beneficence are legally insufficient to establish that an applicant is “exclusively” or



primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

In 2003, Victory provided financial assistance to three residents in the sheltered care facility by covering the unpaid balance of their monthly rent. It appears possible, and in fact likely, that Victory will be reimbursed for this financial assistance by the provisions of the Addendum which require that residents receiving financial assistance sign over their security deposits, life insurance policies and subsequent gifts. Providing financial assistance to three of fifty-one residents together with the likelihood of being reimbursed for the financial assistance must be considered “incidental” acts of beneficence. Section 28 of the Contract signed by residents upon admission to the sheltered care facility states that in the event real estate taxes are charged to Victory, “resident shall be liable for all real estate taxes assessed or attributed to his/her suite.” Tr. p. 47; Intervenor’s Ex. No. 2. This provision, similar to other provisions discussed above, seems “lacking in the warmth and spontaneity indicative of a charitable impulse.” Korzen at 158. It is clear from the record that the primary purpose of Victory is not to provide charity, but to provide a certain enhanced lifestyle to the elderly who can afford to pay for it. Wyndemere Retirement Comm. v. Department of Revenue, 274 Ill. App. 3d 455 (2d Dist. 1995). Accordingly, I am unable to conclude that the use of the sheltered care facility on the subject property is exclusively charitable.

For these reasons, it is recommended that the Department’s determination which granted the sheltered care facility an exemption from 2003 property taxes should be reversed and the sheltered care facility located on Lake County Parcel Index Number 06-03-100-017, should not be exempt from 2003 real estate taxes.

ENTER:

July 27, 2005

Kenneth J. Galvin